

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Richmond Division

JOE ALEXANDER

Plaintiff,

v.

Case No. 3:19-cv-00688-JAG

DIET MADISON AVENUE, *et al.*,

Defendants.

**PROPOSED INTERVENORS' MEMORANDUM IN SUPPORT OF MOTION FOR  
PROVISIONAL SEALING, OR IN THE ALTERNATIVE, FOR EXPEDITED HEARING**

Proposed Intervenors, The Interpublic Group of Companies, Inc. ("IPG") and The Martin Agency ("Martin") (collectively, "Proposed Intervenors"), by counsel, pursuant to Rule 7 of the Local Civil Rules for the United States District Court for the Eastern District of Virginia, hereby submit this memorandum in support of their motion for provisional sealing, or in the alternative, for an expedited hearing on Proposed Intervenors' *Motion For Leave To Intervene, To Seal Confidential Information and For Protective Order* [Dk. No. 5] ("Motion To Seal").

Local Civil Rule 5 provides that before the court will decide a sealing motion, parties and non-parties shall have seven (7) days to file their objection, if any, to the motion. *See* Local Civil Rule 5(C). The Rule's briefing schedule contemplates that the information sought to be sealed is already under seal on a provisional basis. *See id.* ("The document or portion of a document that is the subject of a motion to seal . . . will be treated as sealed pending a determination by the Court on a motion to seal."). The information Proposed Intervenors seek to seal, however, is presently accessible to the public; that is the problem Proposed Intervenors seek to remedy in their Motion To Seal. Accordingly, expedited treatment of the Motion To Seal is appropriate and necessary to ensure that the issue is not rendered moot as a result of Plaintiff's unilateral disclosure, which, for

the reasons set forth in the Motion To Seal, Proposed Intervenor's contention was improper.

To avoid the Motion To Seal being mooted unfairly, Proposed Intervenor's request that the Court enter an order no later than Friday, October 11, 2019,<sup>1</sup> sealing, on a provisional basis, the information that is the subject of the Motion To Seal pending a final resolution of the Motion. Specifically, Proposed Intervenor's request that the Court order the Clerk to substitute Proposed Intervenor's proposed redacted Complaint [Dk. No. 9-2] for the existing non-redacted Complaint [Dk. No. 1] until further order of the Court.

Alternatively, Proposed Intervenor's request that the Court enter an order requiring:

- (i) that within the 7-day deadline set forth in Local Civil Rule 5, Plaintiff shall file his response to the Motion To Seal in its entirety; that is, respond to all issues raised in the Motion To Seal, not just the sealing issue;
- (ii) that Proposed Intervenor's shall file their rebuttal to any response to the Motion To Seal within three (3) days of the filing of any such response; and
- (iii) that a hearing on the Motion To Seal shall be scheduled for a date convenient to the Court, but preferably as soon as possible.<sup>2</sup>

---

<sup>1</sup> Under the circumstances, one day is sufficient notice to the public of Proposed Intervenor's request to seal, provisionally, the information that is the subject of the Motion To Seal. *See In re Knight Pub. Co.*, 743 F.2d 231, 235 (4th Cir. 1984) (advance notice to public of sealing motion need only be reasonable under the circumstances).

<sup>2</sup> If the Court orders provisional sealing, Proposed Intervenor's still request an expedited hearing on the Motion To Seal. *See Doe v. Pub. Citizen*, 749 F.3d 246, 272 (4th Cir. 2014) ("The public's interest in monitoring the work of the courts is subverted when a court delays making a determination on a sealing request while allowing litigation to proceed to judgment in secret.").

Undersigned counsel certifies that he conferred with Plaintiff's counsel prior to filing this motion and represents the following: (i) Plaintiff's counsel has not yet reviewed the Motion To Seal and is unable to identify Plaintiff's position on any of the issues addressed in the Motion To Seal; (ii) Plaintiff objects to provisionally sealing the information that is the subject of the Motion To Seal; and (iii) Plaintiff has no objection to the alternative briefing schedule and expedited hearing request set forth herein.

WHEREFORE, Proposed Intervenors respectfully request that their motion be granted; that the Court enter an order provisionally sealing the information that is the subject of the Motion To Seal, or in the alternative, establishing the briefing schedule and an expedited hearing consistent with the schedule outlined above; and that the Court award any additional relief it deems fair and just.

Date: October 9, 2019.

Respectfully submitted,

THE INTERPUBLIC GROUP OF  
COMPANIES, INC.

and  
THE MARTIN AGENCY

By Counsel

/s/ David B. Lacy

David B. Lacy (VSB #71177)  
Lauren E. Fisher White (VSB #80360)  
CHRISTIAN & BARTON, LLP  
909 East Main Street, Suite 1200  
Richmond, Virginia 23219-3095  
Tel.: (804) 697-4100  
Fax: (804) 697-4112  
dlacy@cblaw.com  
lfwhite@cblaw.com

Maura J. Wogan\*  
Nicole Bergstrom\*

FRANKFURT KURNIT KLEIN & SELZ, PC

28 Liberty Street

New York, New York 10005

Telephone: (212) 980-0120

Facsimile: (212) 593-9175

mwogan@fkks.com

nbergstrom@fkks.com

\* *pro hac vice* admission pending

*Counsel for Proposed Intervenors*

*The Interpublic Group of Companies, Inc.*

*and The Martin Agency*

**CERTIFICATE OF SERVICE**

I hereby certify that on the 9th day of October, 2019, I will electronically file a copy of the foregoing with the Clerk of Court using the CM/ECF system, which will then send a notification of such filing (NEF) to the registered participants as identified on the NEF to receive electronic service, including:

Steven S. Biss (VSB #32972)  
300 West Main Street, Suite 102  
Charlottesville, Virginia 22903  
Telephone: (804) 501-8272  
Facsimile: (202) 318-4098  
Email: [stevenbiss@earthlink.net](mailto:stevenbiss@earthlink.net)

*Counsel for Plaintiff Joe Alexander*

/s/ David B. Lacy  
David B. Lacy (VSB #71177)  
CHRISTIAN & BARTON, LLP  
909 East Main Street, Suite 1200  
Richmond, Virginia 23219-3095  
Tel.: (804) 697-4100  
Fax: (804) 697-4112  
[dlacy@cblaw.com](mailto:dlacy@cblaw.com)

#2540899